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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,987	10/13/2004	Christopher Michael Penfold	2955-207	2253
6449 7590 08/25/2008 ROTHWELL, FIGG, ERNST & MANBECK, P.C. 1425 K STREET, N.W. SUITE 800 WASHINGTON, DC 20005				
EXAMINER GEHMAN, BRYON P				
ART UNIT 3728		PAPER NUMBER		
NOTIFICATION DATE 08/25/2008		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

Office Action Summary

Application No.

10/510,987

Applicant(s)

PENFOLD ET AL.

Examiner

Bryon P. Gehman

Art Unit

3728

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-7,10,11 and 16-18 is/are pending in the application.
- 4a) Of the above claim(s) 17 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-7,10,11 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 25, 2008 has been entered.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed external and internal cover pieces must be shown or the features canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1, 3-7, 10-11 and 16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. That each pack comprises respective external and internal cover pieces is not seen as being disclosed.

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: To any degree the provision of external and internal cover pieces may be shown to be disclosed, these terms are not seen to describe such elements.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 3-7, 10-11 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toren (5,549,204) in view of Reid (4,574,954) and either one of Wharton et al. (5,172,812) and Hall et al. (4,158,411). Toren discloses a pack assembly (Figures 1-4) comprising two packs (one on each side of fold line 5) of medicinal tablets joined together and cover pieces (portions of 4 or surface of 1 receiving the aluminum 4 on either side of 5), the two packs being joined such that the assembly has a stowed configuration (Figure 8) in which the medicinal tablets cannot be expelled and an opened configuration (as in Figure 6) in which the medicinal tablets can be expelled, the cover pieces being in face to face relation when the assembly is in its stowed configuration, each pack comprising a base wall (1) which defines a plurality of locations for the tablets, wherein at each location there is a pocket (2) which is integral with the base wall and constitutes a recess for a tablet, a cover piece (portions of 4 or surface of 1 receiving the aluminum 4 on either side of 5) of a rupturable material and a tablet (3) between the pocket and the cover piece, wherein the base wall is of sufficient rigid construction as to be resistant to permanent deformation. Toren does not disclose each pocket to be substantially hemispherically dome-shaped. However, Reid discloses a similar pack wherein each individual pocket is substantially hemispherically dome-

shaped and elastic so as to be reversibly flexed (pushing on the pocket from Figure 4 to return to Figure 3). To modify Toren's somewhat domed pocket with a hemispherically dome-shaped pocket as claimed would entail a mere change in shape of the pocket and yield only predictable results, as described in Reid at column 3, lines 33-40. "[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill." *KSR Int'l v. Teleflex Inc.*, 127 S.Ct. 1740, 82 USPQ2d 1396 (2007). A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. To modify the pockets of Toren to be shaped and flexible in the manner of Reid would have been obvious in order to facilitate removal of the tablets from the pack, as suggested by Reid. Toren also does not disclose each cover piece to be comprised of an external cover piece and an internal cover piece, respectively. However, each one of Wharton et al. and Hall et al. discloses provided with a cover piece (14 and 22; 12) comprising an external cover piece (22; 16) and an internal cover piece (14; 18). To modify Toren's cover piece employing a laminate structure of plural cover pieces as disclosed by either one of Wharton et al. and Hall et al. would have been obvious in order to strengthen and/or protect the easily rupturable internal cover piece and facilitate dispensing of tablets in the manner suggested by either one of Wharton et al. and Hall et al.

As to claim 3, Toren discloses tablets in and of themselves (naked).

As to claim 4, Toren discloses the tablets provided in a blister pack.

As to claim 5, Reid and Wharton et al. each further disclose a pack comprising a base wall having openings which correspond to the locations of blisters located against the base wall protruding through the openings and functioning as displaceable pockets.

As to claim 6, Toren discloses at least four pockets.

As to claim 7, Toren discloses the base wall formed from a polymer (see column 3, lines 39-46)

As to claims 10 and 11, Reid further discloses that the pocket can be pushed inwardly causing a stable inverted configuration (see column 1, lines 33-54) bending about a hinge line pre-stressed to invert (see column 2, line 43 through column 3, line 32). To modify the pocket and base wall structure of Toren employing the pre-stressing and stable inverted conversion as taught by Reid would have been obvious in order to facilitate inverting the pocket and removing the tablet, as suggested by Reid.

As to claim 16, Reid further suggests injection molding as a method to form the pack.

8. Applicant's arguments with respect to claims 1, 3-7, 10-11 and 16 have been considered but are moot in view of the new grounds of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Tuesday through Thursday from 7:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Bryon P. Gehman/

Bryon P. Gehman
Primary Examiner
Art Unit 3728

BPG